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# **Supreme Court of the United States**

**No. 1111**

**DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,**

*Petitioner,*

*vs.*

**EVELYN KITCHNER, Administratrix of the Estate of  
ELLINGER GREEN VANCE,**

*Respondent.*

**ON PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT  
OF CALIFORNIA**

**BRIEF OF ATTORNEY GENERAL OF THE STATE  
OF NEW YORK, AMICUS CURIAE, IN SUPPORT  
OF PETITION**

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# Supreme Court of the United States

No. 1141—October Term, 1963

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

*vs.*

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE,

*Respondent.*

## BRIEF OF ATTORNEY GENERAL OF THE STATE OF NEW YORK, AMICUS CURIAE, IN SUPPORT OF PETITION

(1)

The Attorney General of the State of New York urges that the petition for certiorari be granted because the decision of the Supreme Court of California (388 Pac. 2d 720) in invalidating a California statute (Welfare and Institutions Code, § 6650) imposing upon near relatives<sup>1</sup> liability for the support of persons in mental institutions has used in its opinion language broad enough to invalidate a New York statute of similar scope and effect.

The Court said (p. 5 of Appendix to Petitioner's brief):

"Whether the commitment is incidental to an alleged violation of a penal statute, as in *Hawley* [59 Cal. 2d 247], or is essentially a civil commitment as in the

<sup>1</sup> " \* \* \* husband, wife, father, mother, or children of a mentally ill person \* \* \* shall be liable for his care, support, and maintenance in a state institution of which he is an inmate."

instant case, the purposes of confinement and treatment or care in either case encompass the protection of society from the confined person, and his own protection and possible reclamation as a productive member of the body politic. Hence the cost of maintaining the state institution, including provision of adequate care for its inmates, cannot be arbitrarily charged to one class in the society; such assessment violates the equal protection clause."

## (2)

The Mental Hygiene Law of the State of New York provides (§ 24, subd. 2):

"2. The committee, guardian, or trustee of a trust fund established for the support of a patient or any fiduciary or payee of funds for and on behalf of a patient shall be jointly and severally liable and responsible for payments for services, care, treatment and maintenance provided for in the preceding subdivision, from the date of admission of such patient or from the date such services, care, treatment and maintenance were provided to the extent of such funds received or held for and on behalf of such patient and the husband, wife, father, mother and children of such patient, if such relatives are of sufficient ability, shall also be jointly and severally liable and responsible for such payments, any other provision or rule of law to the contrary notwithstanding."

## (3)

It is pointed out in Petitioner's brief (p. 7) that the provisions for the support by relatives of patients in mental institutions which the decision below has stricken down are found in substantially the same form in the statutes of no less than forty-two states, plus the District of Columbia and the Commonwealth of Puerto Rico. The statutes are listed at page 21 of the Appendix to Petitioner's brief.

The decision below also raises serious obstacles in the path of any State which invokes the Uniform Support of Dependents Law (N. Y. Domestic Relations Law § 32).<sup>2</sup>

The California and the New York statutes do involve some extension of the common law principles relating to the support by close relatives of the mentally ill. But at the common law a husband was liable for the support of his mentally ill wife in a public institution. *Matter of Fox*, 250 App. Div. 31 (2nd Dept., 1937), aff'd 275 N. Y. 604 (1937).

The decision below thus contravenes widely prevalent statutory schemes for the exoneration of the public treasury from the burden of supporting patients in State institutions. In New York as much as ten million dollars are collected yearly from responsible relatives of patients. We submit that the public interest strongly favors the granting of the petition.

<sup>2</sup> For the extent to which this statute has been adopted and invoked, see Note, 48 Cornell L. Q. 541 (Spring, 1963).

**CONCLUSION**

**The petition for certiorari should be granted.**

**June 3, 1964.**

Respectfully submitted,

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